

to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Subadvisers to negotiate lower subadvisory fees with the Adviser.

### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the Application. Each Fund will hold itself out to the public as employing the management structure described in the Application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Subadviser, the affected Fund shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in that disclosure caused by the addition of the new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, having been approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed

within the discretion of the then-existing Independent Trustees.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser would derive an inappropriate advantage.

7. Independent counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

11. No director or officer of the Trust, or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of Rule 15a-5 under the Act, if adopted.

Florence E. Harmon,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56343; File No. SR-Amex-2007-95]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Execution of NDX and RUT Combination Orders

August 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 20, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules and procedures regarding the definition and execution of NDX and RUT combination orders in Amex Rules 950-ANTE and 953-ANTE (c). The text of the proposed rule change is available at the Amex, the Commission's Public Reference Room, and <http://www.amex.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt Commentary .01 to Amex Rule 950-ANTE(e) to include the definition of NDX and RUT combination orders in Amex rules.<sup>3</sup> Pursuant to proposed Commentary .01(a) to Amex Rule 950-ANTE(e), a "NDX Combination" is a long (short) NDX call and a short (long) NDX put having the same expiration date and strike price. A "RUT Combination" is a long (short) RUT call and a short (long) RUT put having the same expiration date and strike price. As defined in proposed Commentary .01(c) to Amex Rule 950-ANTE(e), a "NDX combination order" is an order to purchase or sell NDX options and the offsetting number of NDX Combinations defined by the delta. Likewise, a "RUT combination order" is an order to purchase or sell RUT options and the offsetting number of RUT Combinations defined by the delta. The delta is defined as the positive (negative) number of NDX or RUT Combinations that must be sold (bought) to establish a market neutral hedge with the corresponding NDX or RUT option position. The proposal is limited to NDX and RUT options.

The Exchange further proposes to adopt execution procedures regarding NDX and RUT combination orders in Amex Rule 953-ANTE(c). The proposed rule enables a member holding a NDX or RUT combination order, and bidding or offering in a multiple of the minimum price variation on the basis of a total debit or credit for the order, to execute the NDX or RUT combination order even if he has determined that the order may not otherwise be executable (e.g., the bids and offers displayed in the limit order book or in the trading crowd will not satisfy the net credit/net debit price of the order).

This proposal permits the member to execute the order at the best net debit or credit price so long as: (1) No leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the limit order book; and (2) at least one leg of the order would trade at a price that is better than the corresponding bid or offer in the limit order book.

<sup>3</sup> NDX is the NASDAQ-100 Index; RUT is the Russell 2000 Index.

The Exchange proposes that if a NDX or RUT combination order is not executed immediately, that same order may be executed and printed at the prices originally quoted for each of the component option series in the two (2) hour time period after the original quote, provided the prices originally quoted satisfied the requirements of proposed paragraphs (c)(i)(A) and (c)(i)(B) of Amex Rule 953-ANTE, and provided at the time of execution no individual leg of such order may trade ahead of the corresponding bid or offer in the NDX or RUT limit order book.

The purpose of this proposal is to facilitate the hedging of NDX and RUT Combinations during times of market volatility. NDX and RUT market participants holding orders for options tied to combinations often experience difficulty in completing such transactions in a volatile market and are unable to complete the trade because the prices originally quoted for a component leg of the order may no longer be traded within displayed market quotes.

The Amex notes that when transactions for the component series of a NDX or RUT Combination are traded out-of-range pursuant to the two (2) hour window permitted by proposed Amex Rule 953-ANTE(c), the trade will be price reported to the trading floor and to the Options Price Reporting Authority ("OPRA") using a sold sale indicator to provide notice to the public that the reported prices were part of an out-of-range combination trade.

The Exchange represents that proposed Amex Rule 953-ANTE(c)(ii) will be used during times of market volatility for the benefit of the marketplace and investors in order to provide liquidity to larger-sized orders. Finally, as noted above, the component leg of an NDX or RUT combination order will be price reported to the trading floor and OPRA using a sold sale indicator that will act as notice to the public that the reported prices are part of an NDX or RUT combination order.

Finally, the Amex further notes that it will issue a regulatory circular to its membership to explain the operation of Amex Rule 953-ANTE(c). In the regulatory circular the Amex will remind its membership that the adoption of Amex Rule 953-ANTE(c) does not minimize the obligation of members to obtain best execution of options orders for their customers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup>

<sup>4</sup> 15 U.S.C. 78f(b).

in general and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.<sup>6</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> Amex requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof.

Number SR-Amex-2007-95 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-95 and should be submitted on or before September 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-17670 Filed 9-6-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56347; File No. SR-NASD-2007-056]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish a Membership Waive-In Process for Certain NYSE Member Organizations

August 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2007, the National Association of Securities Dealers, Inc. ("NASD") (n/k/a Financial Industry Regulatory Authority, Inc.) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD.<sup>3</sup> On August 16, 2007, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to adopt Interpretive Material 1013-1 ("IM-1013-1"), a membership waive-in process for certain New York Stock Exchange ("NYSE") member organizations, and Interpretive Material Section 4(e) to Schedule A of the By-Laws, a membership application fee waiver for those NYSE member organizations that apply for membership pursuant to IM-1013-1. The proposed rule change is submitted in furtherance of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation") ("Transaction").<sup>4</sup> The text of the proposed rule change, including the FINRA Waive-In Membership

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

<sup>4</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (File No. SR-NASD-2007-023).

Application Form and Membership Agreement, is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On November 28, 2006, NASD and the NYSE Group announced a plan to consolidate their member regulation operations into a combined organization intended to be the sole U.S. private-sector provider of member firm regulation for securities firms that do business with the public. Upon closing of the Transaction, NASD adopted the new corporate name, FINRA.<sup>5</sup> The consolidation is intended to streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

On July 24, 2007, NYSE filed a proposed rule change requiring its member organizations to become members of FINRA to achieve the Transaction's goal to eliminate duplicative member firm regulation ("Mandatory FINRA Membership filing").<sup>6</sup> Currently, there are approximately 95 NYSE member organizations that were not also NASD

<sup>5</sup> See *supra* note 3. The Commission notes that the Transaction closed on July 30, 2007. See telephone conference between Nancy Burke-Sanow, Assistant Director, Commission, and Patrice Gliniecki, Senior Vice President and Deputy General Counsel, FINRA, on July 31, 2007.

<sup>6</sup> See Securities Exchange Act Release No. 56173 (July 31, 2007), 72 FR 44205 (August 7, 2007) (SR-NYSE-2007-67).

<sup>7</sup> 17 CFR 200.30-3(a)(12).